

EXHIBIT 10

Case No. C 07 0943 WHA

Parrish v. National Football League Players Association, et al.

IN THE DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT
(SAN FRANCISCO DIVISION)

BERNARD PAUL PARRISH, HERBERT
ANTHONY ADDERLEY, and WALTER
ROBERTS, III, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

Civil Action
C07 0943 WHA

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a
Virginia Corporation, and
NATIONAL FOOTBALL LEAGUE
PLAYERS INCORPORATED, d/b/a
PLAYERS, INC., a Virginia
Corporation,

Defendants

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
GENE UPSHAW

Wednesday, February 13, 2008
9:05 a.m.

Manatt, Phelps & Phillips, LLP,
One Metro Center, Suite 1100
700 12th Street, N.W., Washington, D.C.

Reported By:
Susan E. Smith, RPR, Notary Public

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APPEARANCES:

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On behalf of the Plaintiffs

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On behalf of the Defendants

ALSO PRESENT:

RICHARD BERTHELSEN, General Counsel
NFL Players Association
KEN NUZZI, Videographer

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1 fees received for use of retired players'
2 names and images to the retired players
3 utilized and we will continue to do so.

4 So does that mean that -- there was
5 no distribution, of course, to an escrow
6 account because no escrow account existed; is
7 that right?

8 A. That's correct. The money that
9 was generated by a retired player went to the
10 retired player.

11 Q. Do you know why the escrow account
12 that is mentioned in the GLA was not created?

13 A. The reason it wasn't created,
14 because we passed the money straight to the
15 players. There was no money to set up an
16 escrow account. I will be glad to take a
17 loan. We can set one up today. But we don't
18 have one, we never did.

19 Q. And did you ever inform any
20 retired player that the escrow account was not
21 being set up?

22 A. No.

23 Q. Now, when you say we have
24 distributed all of the licensing fees received
25 for use of retired players' names and images

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1 said, This is a great player, you should be
2 using him, et cetera?

3 MR. KESSLER: Are you asking him
4 personally?

5 MR. KATZ: Yes, if he knows. He may
6 not know.

7 A. If I personally have --

8 Q. If the PI or the NFLPA has.

9 A. Oh, I'm sure they have, because
10 that's a pretty common thing to do, is to try
11 to get the licensees to take any player that's
12 there. We try to avail them of different
13 players, and we even suggest that they should
14 use certain players. And he would fall right
15 into that same category.

16 Q. But do you have firsthand
17 knowledge that it was done with respect to Mr.
18 Adderley? You personally didn't do it, right?

19 A. Where, for Adderley?

20 Q. I mean, that's not your job. You
21 don't go out and sell licenses?

22 A. Well, it's not my job on a
23 day-to-day basis, but whenever I have contact
24 with licensees or sponsors, or whatever, I
25 always remind them that we also have this

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1 group of players besides our active players,
2 and that applies to any of our players, both
3 active and retired.

4 Q. Did you personally ever promote
5 Mr. Adderley's image to a licensee?

6 A. Well, I think his image was
7 promoted, and I don't know if I personally did
8 it, no. I never, I have never personally.

9 Q. Do you have firsthand knowledge
10 that anyone else in PI or NFLPA has done that?

11 A. As part of a program, yes, I do.

12 Q. And which program was that?

13 A. That was a jersey program which I
14 actually participated in.

15 Q. Was that the Reebok program?

16 A. Yes. And I probably, just to
17 follow up on that, my jersey had the same
18 depth as Herb's: No one wanted it. We
19 couldn't sell it. They even quit making it.
20 They made the replica and that was the end of
21 it.

22 Q. Did Mr. Skall return your phone
23 calls about it?

24 A. I know where to find him. He
25 returned my phone calls.

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1 triggered the salary cap for the 1994. That
2 was how it all played out.

3 Q. Now, you got asked some questions
4 about whether or not PLAYERS INC ever engaged
5 in any marketing efforts for retired NFL
6 players. Do you recall question about that?

7 A. Yes.

8 Q. Have you personally ever made any
9 efforts to try to market retired players to
10 potential licensees?

11 A. Yes, I've had discussions with
12 several licensees about the retired players
13 and how they would be helpful and beneficial
14 in certain programs. Yes, I've done that.

15 Q. Can you give some examples?

16 A. Well, the most recent example
17 would be the EA contract that we just executed
18 not long ago, and I offered retired players in
19 that area. But there was, there was really no
20 interest.

21 Q. There was no interest in EA?

22 A. No.

23 Q. Now, do you recall any efforts you
24 made regarding the Hall of Fame Players
25 program?

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1 A. Yes.

2 Q. What do you recall about that?

3 A. I recall that, because I am a
4 member of the Hall of Fame, so I'm familiar
5 with a lot of the activities that were going
6 on with the retired players. We tried on
7 several instances to get the Hall of Fame
8 players included in several programs, so --

9 Q. And were you successful in any?

10 A. Very few.

11 Q. But were you successful in one
12 program at least?

13 MR. KATZ: Object to leading.

14 Q. Do you recall any specific program
15 where you were successful?

16 A. I would think that the -- some of
17 the, you know, the trading card companies
18 might have been where we might have had some
19 success.

20 Q. Are other people on PLAYERS INC
21 involved in any efforts to market retired
22 player rights, that you know about?

23 MR. KATZ: Can you read the question
24 back, please.

25 (Whereupon, the reporter read back

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1 the pending question.)

2 MR. KATZ: Object to form.

3 Q. You can answer.

4 A. Yes, I'm familiar with people in
5 PLAYERS INC marketing retired player rights.

6 Q. Now --

7 A. And that would be, we have a whole
8 department of player marketing. That's what
9 they do.

10 Q. But would that include retired
11 players?

12 A. Of course. It would include, at
13 the time that we are talking about, that would
14 include Howard Skall, who was head of that
15 department. That was one of his duties, was
16 player marketing, both active and retired.

17 Q. Now, when PLAYERS INC has what's
18 been called designated programs -- are you
19 familiar with that idea, for retired players?

20 A. Yes, I am.

21 Q. Are designated programs typically
22 entered into with retired players with the
23 retired player GLA or with some other type of
24 arrangement?

25 MR. KATZ: I object. It's leading

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1 STATE OF MARYLAND) ss
2 COUNTY OF BALTIMORE)

3
4 I, Susan Smith, RPR, a Notary Public
5 of the State of Maryland, do hereby certify
6 that the within named, GENE UPSHAW personally
7 appeared before me at the time and place
8 herein set out, and after having been duly
9 sworn by me, was interrogated by counsel.

10 I further certify that the
11 examination was recorded stenographically by
12 me, and this transcript is a true record of
13 the proceedings.

14 I further certify that the
15 stipulations contained herein were entered
into by counsel in my presence.

16 I further certify that I am not of
17 counsel to any of the parties, nor an employee
18 of counsel, nor related to any of the parties,
nor in anyway interested in the outcome of
this action.

19 As witness my hand and notarial seal
20 this 14th day of February, 2008.

21 My commission expires
22 November 1, 2010

Susan E. Smith

Susan E. Smith
Notary Public

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